

EXECUTIVE BRANCH GATT STUDY No. 8

GATT PROVISIONS ON RELIEF FROM INJURIOUS IMPORTS

COMMITTEE ON FINANCE
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Introduction

The reciprocal reduction of duties on imports—a central purpose of the GATT—is based on the expectation that two-way trade will expand if the theory of comparative advantage and international market forces are permitted to operate more freely. By the same token, there is recognition in GATT that trade liberalizations can cause dislocations and injury to less efficient producers. In the long run, these producers in importing countries are expected to shift to more efficient and profitable activities. Overall, the export increases growing out of this shift are expected to offset the dislocations created by the increase in imports. In practice, however, financial and human resources cannot be shifted easily into alternative lines of production, particularly in the face of very rapid import increases.

The need to deal realistically with the injurious impact of imports resulting from trade liberalization measures was taken into account by the drafters of the GATT. They did not intend, however, to make it easy for GATT countries to free themselves from their negotiated commitments to reduce tariffs and other barriers to trade. The United States was a prime mover in having incorporated in the GATT an "escape clause" patterned after the language of the escape clause first introduced by the United States in its bilateral trade agreement with Mexico in 1943.

The problems which arise from increased imports, however, are varied and complex and no single solution has proven adequate for dealing with every situation.¹ Therefore, GATT countries confronted with substantial import penetration have not only turned to the standard escape clause contained in Article XIX but also to solutions which lie outside any of the GATT provisions.

GATT Provisions on Relief from Injurious Imports

Article XIX

Article XIX sets forth conditions which must be present before escape clause action can be taken and procedures to be followed in taking an action which meets those conditions. Member countries are permitted to suspend an obligation, in whole or in part, or withdraw or modify a concession if as a result of unforeseen developments and the effects of obligations incurred under GATT, including tariff concessions, there is such an increase in imports of a product as to cause or threaten to cause serious injury to producers of like or directly competitive goods.²

¹ Unfair trade practices such as dumping and export subsidies are discussed in another of these papers.

² Although not discussed in this paper, the major GATT trading countries have adopted some form of adjustment assistance program to facilitate the adaptation of domestic industries to economic changes, including those resulting from increased imports. No provision is made in the General Agreement, however, for this type of assistance. In the United States, conditions under which firms and workers may qualify for adjustment assistance are set forth in the TEA of 1962.

Formal GATT consideration of specific cases under Article XIX has not substantially clarified the meaning of such terms as import increase, unforeseen developments or serious injury. An early precedent was set by a GATT Working Party which examined a complaint by Czechoslovakia against a U.S. escape clause action. In effect, the Working Party held that the burden of proof is on the complainant to show that the suspension of a concession or obligation under Article XIX is not justified. The interpretation of the conditions justifying escape clause action has been shaped, therefore, in large part by the actions countries have taken pursuant to their own domestic law.

The remedy for serious injury or threat of serious injury is to suspend the obligation, in whole or in part (including the obligation not to resort to quantitative restrictions), or to withdraw or modify a tariff concession on the imported product causing the injury, but only to the extent and for such time as may be necessary to prevent or remedy injury. The suspension of the obligation or the withdrawal of the concession must relate causally to the increase in imports, and according to GATT practice, be made on a non-discriminatory basis.

Import relief measures are permitted only "to the extent and for such time as may be necessary" to prevent or remedy injury. A country proposing to suspend or modify concessions must consult with the affected member countries. While GATT contains no express provisions for compensation, under GATT practice countries having a substantial interest in the concession which is being modified or suspended may request substantially equivalent compensatory concessions. If agreement is not reached, the affected countries may suspend, with respect to the country taking the action, substantially equivalent concessions in their own schedules or other GATT obligations provided the GATT member countries, acting jointly, do not disapprove. The fact that retaliation is authorized on a discriminatory basis serves further to discourage countries from taking unjustified escape clause action.

Use of Article XIX by the United States and Other Countries

GATT member countries on the whole have invoked the Article XIX escape clause provision infrequently (see attachment). Since the inception of GATT, 13 member countries, either individually or as members of a regional group, have used the Article a total of 61 times. The United States has invoked it 16 times, and Australia, 16. France, Germany and Italy each invoked the Article twice; and EC has used it twice. Canada used it 8 times, 5 of them for farm products imported mainly from the United States.³

Other Forms of Import Relief Under the GATT

In some circumstances, member countries have preferred to act under GATT provisions other than Article XIX. For instance, member countries may withdraw a tariff concession permanently by entering into renegotiations under regular Article XXVIII procedures. A case in point is the use of this Article by the United States with respect to low-priced stainless steel table flatware.

³ Precautions must be taken in interpreting this record of usage of Article XIX in view of the many alternative forms of relief available both within and outside the provisions of the General Agreement (see attachment).

Member countries may also take any action, under Article XXI of the GATT, which they consider "necessary for the protection of . . . essential security interests." The Mandatory Oil Import Program of the United States, authorized domestically by Section 232 of the Trade Expansion Act, could be justified under this provision of GATT. Although not widely used, other countries have justified certain import restrictions on national security grounds.

Article XXXV permits a country to withhold the application of its schedule of tariff concessions, or of its obligations under the entire agreement, from another country with which it has not entered into tariff negotiations. A number of member countries have invoked this Article on joining the GATT because of their fear that acceptance of GATT obligations would lead to serious market disruption at home from competitive imports. Developed and developing countries alike have singled out Japan as the primary target of these actions since that country joined the GATT in 1955. For the most part, major trading countries have disinvoked Article XXXV against Japan, but only after obtaining trading commitments from that country in bilateral negotiations. For example, Japan has agreed to restrain exports of selected products to those countries and, in some cases, to consult whenever Japanese exports threaten market disruption in the importing country.

Alternative Measures To Provide Relief From Injurious Imports

Tariffs can be increased unilaterally on items which are not bound under the GATT, that is, products on which tariff concessions have not been granted. Many countries have taken steps to avoid import injury by raising duties on unbound items.

Developing countries are largely insulated from competitive imports which might be injurious to domestic industry through import restrictions. Some of these may be justified on balance-of-payments or economic development grounds. Apart from residual import restrictions, some developed countries maintain discriminatory import restrictions on selected imports. Import restrictions of this type—primarily directed against imports from Japan—are widespread in Western Europe.

Export Restraints

The use of export restraints has also reduced the need for countries to resort to Article XIX. Export restraints affect shipments of selected goods which are ordinarily free of import restriction but pose a threat to production in the importing country. While such actions might be considered inconsistent with the requirements of GATT Article XI, complaints under that article against such procedures are unlikely to arise, since the controls are imposed at the request of the importing country that would be principally affected by the export restraints.

The most comprehensive example of an export control arrangement is the Long-Term Arrangement Regarding International Trade in Cotton Textiles (LTA) negotiated under the auspices of the GATT. This arrangement affects much of the free world trade in cotton textiles by providing the mechanisms that enable exporting and importing countries to control the growth of trade in cotton textiles through a

network of bilateral agreements and by unilateral action. The LTA also assures that exports from participating countries will not be restrained more severely than exports from nonparticipating countries causing market disruption. More recently, export controls aimed at avoiding market disruption have been extended to woolen and man-made fibers in some cases.

Less formal export restraints are also imposed by some countries, particularly Japan. These restraints may or may not result from bilateral negotiations between the United States and the country imposing the controls. While they are reflected, in some cases, in written "understandings," they are not embodied in international agreements. These restraints often are imposed by the exporting country to forestall the imposition of import quotas by the importing country. Japanese and EC steel producers, for example, restrain exports of steel products to the United States under such an arrangement.

Export restraints are also maintained by major suppliers of fresh, chilled, or frozen beef, veal, mutton and goat meat to the U.S. market. New control levels are agreed upon with the supplying countries each year and contained in bilateral agreements, which provide for both export and import controls. Because of the control of imports provided by these agreements, the President has suspended the quotas on meat imports that otherwise would be required by Public Law 88-482 of 1964.

Japan maintains voluntary or official controls covering a wide range of items to restrain the growth of exports to the United States and other countries. During the fall of 1972, the Japanese Government announced a new program to restrict exports to the world of 20 products or product groups, including passenger cars, trucks, motorcycles, radios and cameras. These controls are to remain in effect for one year from September 1972 to August 1973. The objective is to hold the export growth of controlled items, which will vary by product, to an average rate of increase of about 29 percent over the August 1971-July 1972 base period. A percentage increase of this magnitude would be slightly less than the average rate of increase over the preceding five years.

EC Surveillance and Safeguard Measures

Another approach to avoiding import injury has been taken by the EC in developing a common commercial policy (Council Regulation 1025/70 of May 25, 1970).

Products which are free of import restriction are placed under surveillance whenever there are indications that imports from third countries threaten injury to Community producers of like or competitive products and the interest of the Community requires such action. Surveillance is exercised mainly in conjunction with the processing of import documents by the member states. The member states report monthly to the Commission on imports of these items, and the Commission, in turn, informs the member states of these developments.

The safeguard measures are to be implemented when criteria similar to those contained in GATT Article XIX are met, that is "when a product is being imported into the Community in such

increased quantities and/or under such conditions as to cause or threaten serious injury to Community producers of similar or directly competitive products". The Commission, Council, and the member states each have an assigned role in carrying out the application of the safeguard measures. In critical circumstances when a delay in restraining imports of particular products would result in irreparable injury to a Community producer, the Commission on its own or at the request of a member state can, for example, shorten the validity period of import documents and require an import authorization.

Conclusion

The current problem of market disruption and injurious import growth is not a new one. The rapid growth of low-cost Japanese exports in the 1950's together with a jump in exports of cotton textiles from developing countries in the latter part of the decade caused deep concern in a number of import markets. In 1959 the GATT took up the question of the avoidance of market disruption and established a Working Party to conduct a study. The Working Party concluded that there were political and psychological elements to the problem which made it doubtful that GATT members would rely solely on the standard GATT safeguards and give up the special methods they had been using to dampen the rise in certain imports from Japan and the developing countries. The Working Party urged an approach which would provide for multilateral consultations aimed at "constructive solutions" containing procedures for the orderly expansion of international trade. The GATT subsequently adopted a decision which, in effect, defined market disruption but failed to agree on specific measures to deal with the problem. The GATT did not follow up its decision with any practical steps in part because, as described above, Japanese suppliers entered increasingly into agreements to restrict exports and because order was brought into international trade in cotton textiles through the Short-Term and later the Long-Term Agreement.

While import restraints may at times be necessary, they do run counter to an important objective, a freer allocation of resources worldwide from which all countries would benefit. As the GATT Working Party pointed out, however, the reasons for these restraints are often psychological and political, rather than economic. Every country attempts to strike a reasonable balance between conflicting goals.

Beyond an improvement in U.S. escape clause procedures, ways should be found to meet the twin goals of trade expansion and a healthy domestic economy. Discussions both in and outside the GATT have been initiated aimed at finding better ways to deal with disruptive changes in trade patterns and to allow for a more orderly adjustment by domestic firms to rapidly increasing imports resulting from international market forces.

Use of Article XIX by GATT Members

Australia

Alloy steels
 Antibiotics
 Casual footwear
 Copper brass sheet and strip
 Forged steel flanges
 Four-wheel-drive vehicles (used)
 Heat resisting glassware
 Knitted coats, jumpers, cardigans, sweaters and the like
 Knitted shirts
 Linseed oil
 Motor mowers
 Piece goods, woollen
 Polyethylene and polypropylene twine, cordage, rope and cable
 Printed cotton textiles
 Refrigerating appliances, appliances, parts of
 Timber

Austria

Chicken eggs
 Matches
 Oilcakes
 Porcelain

Canada

Corn
 Frozen peas
 Men's and boys' shirts
 Motor gasoline
 Potatoes
 Strawberries (1957)
 Strawberries (1971)
 Turkeys
 Woven fabric shirts

EEC

Tomato concentrates
 Table apples

France

Foundry pig iron
 Horse meat

Germany, Federal Republic of

Hard coal and hard coal products
 Petroleum and shale oil

Greece

Apples
 Electric refrigerators
 Tires

Israel

Radiotelegraphic and radiotelephone transmission and reception apparatus

Italy

Foundry pig iron

Raw silk

Nigeria

Cement

Peru

Lead arsenate and valves for industrial purposes

Rhodesia and Nyasaland

Cotton and rayon piecegoods

Spain

Cheese

Synthetic rubber

United States

Alsike clover seed

Bicycles

Ceramic table articles

Clinical thermometers

Cotton typewriter ribbon cloth

Dried figs

Hatters' fur

Lead and zinc

Pianos

Safety pins

Sheet glass

Spring clothes pins

Stainless steel flatware

Towelling of flax, hemp or ramie

Wilton and velvet carpets

Women's fur felt hats and hat bodies